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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/674,562
Filing Date: September 30, 2003
Appellant(s): ERHART ET AL.

Scott T Wakeman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/24/2010 appealing from the Office action mailed 11/25/2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1, 4 - 6, 8 - 11, 14 and 16 - 27 are pending.

Claims 1, 4 - 6, 8 - 11, 14 and 16 - 18 are allowed

Claims 2, 3, 7, 12 and 15 are cancelled.

Claim 27 is objected to.

Claims 19 - 26 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,804,346	Mewhinney	10-2004
5,854,832	Dezonno	12-1998

The instant Application

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 19 - 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,804,346 (Mewhinney) in view of U.S. Patent No. 5,854,832 (Dezonno) and further in view of the instant application.

With respect to claims 19 - 26 , Mewhinney teaches a call management system for interconnecting a customer and an agent, means for segmenting a call into a plurality of phases; (Abstract, Col. 4, lines 30 - 34), means for predicting a current phase of the call (Abstract, Col. 4, lines 30 - 34) and means for estimating time remaining in said call (Col. 2, lines 36 - 39, Col. 7, lines 24 - 36 and Col. 7, lines 49 -52). In addition, note that Mewhinney also teaches how long an agent spends in a particular phase or stage in a conversation (See at least Col. 8, lines 32 - 35. What Mewhinney does not teach is the detecting of how long a caller speaks during a conversation. However, note that Dezonno teaches that such is old in the art (note the Abstract, Col. 4, lines 17 – 65, Col. 5, lines 9 – 38 and Fig. 3b). It would have been obvious to one of ordinary skill in the art to have incorporated a means to detect how long a caller speaks, in order to receive a better estimate of the time remaining in a call. Note that the evaluating can easily be obtained from report 320 or from a look at Fig. 3b. With respect to the limitation of a speech recognition device, applicants own application recognizes that speech analysis, done by a speech recognition device, is old in the art. In Mewhinney, it appears that a human agent sends a command to the predictive controller upon detect a word or understanding that a new phase is about to begin. A speech recognition device can do the same as is old in the art and shown by applicants own application (page 7, 1st paragraph). That is, the speech recognition device would detect what phase the communication is in by recognizing key words or the agent, instead of using a keyboard to send a command, could simply say "greeting phase", "discussion phase" or "closing phase" and the commands would be sent. It would have been obvious to one

of ordinary skill in the art to substitute a human agent with a speech recognition device as this is the norm in the art. In addition, note Col. 9, lines 16 – 25, it appears that Mewhinney is indicating that in some embodiments an IVR can replace the human agent and perform the same actions.

Mewhinney and Dezonno teach the claimed limitations except for the speech analysis selected from the group consisting of automatic speech recognition, accent recognition, disfluency, speaking rate and verbosity. However, it is noted that the instant application declares that such speech analysis is well-known in the art (page 7, first paragraph). It would have been obvious to one of ordinary skill in the art to incorporate such speech analysis as disclosed in the instant application into the Mewhinney/Dezonno system, as such would only entail the substitution of one well known speech analysis means for another. In addition, these are all different variations for determining call length and therefore it would have been obvious to one of ordinary skill in the art to use any one of these speech analysis means for determining call length.

(10) Response to Argument

First, Appellants appear to confuse the issue by stating that Mewhinney teaches stages and not phases and that the stages are determined by explicit inputs from an agent. It is unclear to the examiner if Appellants are trying to define stages as determined by some input other than audio communications and that phases are determined from an audio input during a conversation. In any case, the Board is directed to the Summary of Mewhinney at Col. 1, lines 51 – 54, where Mewhinney uses

both terms and such terms are used throughout the Patent. In addition, note Col. 5, line 58 (questioning phase) and Col. 7, lines 65 – 66, among others.

Then the Appellants try to deflect the argument of the examiner in using the instant application as prior art, indicating that since the comments made by Appellants are used in the Detailed Description of the application and therefore cannot be used as prior art. The argument is not understood by the examiner in light of Appellants' explicit statements of well-known speech processing techniques at page 7, first paragraph of the instant application and the last paragraph of page 7 of the instant application. Note the use of well-known prior art techniques discussed and note in particular the technique of word spotting, which is what speech recognition modules do.

The Appellants go on to indicating that the examiner is suggesting that an agent might say which phase the call is in by using an automatic speech recognition device and say at the end or beginning of phase that the call is in the beginning phase or the closing phase. The Appellants give the example, "I'm glad you like our product and I'd like to get your name and address *closing phase*." The examiner was trying to show that a speech recognition device could recognize key words or a command like "greeting phase". To be clearer, the examiner should have given some examples of key words like, "Hello", "more information" or "thanks for calling and have a good day". It is noted that Appellants do not argue that the speech recognition device could not recognize "closing phase", only that such would be confusing to a customer. Appellants can not argue such as this what automatic speech recognition modules or devices do;

they recognize words (word spotting) or phrases that are programmed into the modules, as is well-known in the art.

Having shown that automatic speech recognition devices, as contemplated by Applicants, are old in the art; the question becomes would it have been obvious to one of ordinary skill in the art to have incorporated such into the Mewhinney system? It is noted that Mewhinney accomplishes the same thing as the instant application, but uses an input device like a keyboard or by selecting an input from a screen or the like.

It is noted that a speech recognition device is just another input device. Since the speech recognition device, as contemplated by Appellants, is well-known then all Appellants did in the instant application was to substitute one well-known input device for another and as such would have been obvious to one of ordinary skill in the art. In addition, note Col. 8, lines 44 – 47.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/William J Deane/

Primary Examiner, Art Unit 2614

Art Unit: 2614

Conferees:

/Ahmad F Matar/
Supervisory Patent Examiner, Art Unit 2614

/Fan Tsang/
Supervisory Patent Examiner, Art Unit 2614